ORDER.

Bangalore, dated 16th November 1966

S. O. 5794.—WHEREAS by State Government Order No. LLH 526 LLD 58, dated 12th January 1959, the Industrial Dispute between the Workmen and the Management of Mysore Spinning and Manufacturing Co., Ltd., Bangalore was referred to the Additional Industrial Tribunal, Bangalore, for adjudication ;

AND WHEREAS subsequently the said Industrial Dispute was transferred to the Industrial Tribunal, Bangalore, and the same was taken on the file by the Industrial Tribunal, Bangalore as I.D. No. 28 of 1960;

AND WHEREAS before the said Industrial Tribunal, Bangalore a complaint was made under Section 33-A of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947), by Shri K. Vajaravelu and 11 others contending that they are permanent employees of the said company and the management has illegally changed the service conditions in respect of the half-yearly bonus ;

AND WHEREAS the said Industrial Tribunal, adjudicated upon the said complaint and submitted its Award to the State Government as required under Section 15 read with Section 33 of the said Act ;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947), the Government of Mysore, hereby directs the publication of the said Award in the *Mysore Gazette*.

[No. LMA 546 LLD 66.]

By Order and in the name of the Governor of Mysore,

1486 G. G. PUROHIT, *Under Secy.*

BEFORE THE INDUSTRIAL TRIBUNAL IN MYSORE, BANGALORE.

Dated 31st October 1966.

Present:

A. Panchaksharaiah, B.A. (Hons.), L.L.B. ... Presiding Officer.

Complaint No. 3 of 1966
in I.D. No. 28 of 1960.

Complainants :—
Sri K. Vajaravelu and 11 other Workmen of Mysore Spinning and Manufacturing Co. Ltd, *Vs*: Bangalore.

Opposite Party :—
Management of the Mysore Spinning and Manufacturing Co., Ltd., Bangalore.

Appearances.

For the Complainant: Sri S. Suryanarayana Rao, Authorised Representative.

For the Opposite Party :—Sri V. L. Narasimha Murthy, Advocate.

AWARD.

The above complaint is filed by 12 Complainants said to be workmen under the Opposite Party, *i.e.*, the Mysore Spinning and Manufacturing Co., Ltd., Bangalore. This complaint is filed under Section 33A of the Industrial Disputes Act, 1947. The Complainants contend that they are permanent employees of the said Company and the Management has illegally changed the service conditions in respect of the half-yearly bonus. The Opposite party had given a Notice under Section 9A of the Industrial Disputes Act, 1947 in respect of the work-load, discontinuance of half-yearly bonus, etc., and the same had been referred by the Government to the Additional Industrial Tribunal in their Notification No. LLH 526 LLD 58, dated 12th January 1959. This was later on transferred to this Tribunal and the same was taken on the file as I.D. No. 28 of 1960. The Complainants further contend that the Opposite Party has come forward with a prayer that it may be permitted to withdraw the dispute in I.D. No. 28 of 1960. Accordingly the Tribunal passed a considered award on 11th October 1960 permitting withdrawal and the same was

published in the Gazette on 3rd November 1960. The Complainants contend that during the pendency of the said dispute the Opposite Party has effected some changes in the service conditions and that is done without obtaining the permission required under Section 33 (1) of the Industrial Disputes Act, 1947. The change in the service conditions alleged is that the Opposite party has discontinued payment of 10% half-yearly bonus to all the employees of the Mills including the Complainants. This, it is contended was in existence over a long time and had become a part of their service conditions.

2. The Management, while disbursing the wages on 10th October 1960 included the bonus amount also. The workmen including the Complainants after receiving payment came to know that the Management had paid only 5% as half-yearly bonus instead of 10%. The Complainants submit that this reduction from 10% to 5% is unjust and illegal. Therefore the Complainants pray that this Tribunal may be pleased to pass an award directing the Opposite party not to discontinue payment of 10% half-yearly bonus and also to direct payment of the amount which has been illegally withheld. the complainants further submit that I D. No. 28 of 1960 must be deemed to be pending on the day this petition was filed on 2nd December 1960.

3. As against this it is contended by the Opposite Party that this complaint is not maintainable in law. There was no pendency of I.D. No. 28 of 1960 on 2nd December 1960 when this Complaint was filed. Since this complaint is filed more than 30 days after the publication of the award, this Tribunal has become *functus officio* and it has no jurisdiction to entertain this complaint. There were also several pleas taken up by the Opposite Party. Issues were framed as early as on 15th June 1962. For various reasons this complaint was pending as the matter was before the Hon'ble High Court. It came back with a remand to be re-heard. The parties to this complaint submitted that this Tribunal may be pleased to hear them on Issue No. 5 (a) and (b) before the case could be considered on its merits. Issue No. 5 (a) and (b) are as follows:—

"5 (a) Does the Management prove that there was no pendency of I.D. No. 28 of 1960 before the Industrial Tribunal when this Complaint was filed ?

5(b) If so, is this complaint maintainable ?

4. The above Issue has been framed in view of the provisions of Section 33A. Section 33A lays down:—

> "Where an employee contravenes the provisions of Section 33 during the pendency of any proceedings before a Labour Court, Tribunal or National Tribunal, any employee aggrieved by such contravention may make complaint in writing, etc. ....."

So then one of the important conditions to be satisfied by the complainants is that they must show that when they filed this complaint on 2nd December 1960, I.D. No. 28 of 1960 was pending before this Tribunal. If they succeed in showing that I.D. No 28 of 1960 was pending at the time when this complaint was filed, further matters can be taken up for consideration. Otherwise the complaint fails. It is seen from the so called award passed in I D. No. 28 of 1960 that the matter has been disposed of on 11th October 1960. Sri Subba Rao contended that the award in I.D. No. 28 of 1960 was published on 3rd November 1960 in the Gazette and according to Section 17 of the Industrial Disputes Act, the award takes effect one month after the date of publicaton in the Gazette, *i.e.*, from 3rd December 1960. Till then the matter must be deemed to be pending. Sri Subba Rao also relied upon Section 15 of the Act which says that if any matter is referred to the Tribunal under Section 10 (1)(d), an award has to be passed by the Tribunal under Section 15 of the Industrial Disputes Act, 1947 as contemplated under Section 17 of the said Act. Only after the award is passed and published in the Official Gazette and after the lapse of one month from the date of the publication the proceedings come to an end and till then the proceedings must be deemed to be pending. This complaint petition having been filed on 2nd December 1960 is well within the time and must be deemed to have been filed during the pendency of I.D. No. 28 of 1960. Sri Subba Rao also relied on a decision reported in 1958 (II) LLJ 634. On the strength of this decision Sri Subba Rao contended that when once the Government makes a reference, the Government has no power to cancel the Reference. It must end one way or other before the Industrial Tribunal. In this case, he contended that the Government have not withdrawn the Reference, much less have they cancelled it and therefore it must be deemed to be pending. Sri Subba Rao contended that what was passed by the then Presiding Officer on 11th October 1960 amounted to an award and this award was published in the Gazette on 3rd November 1960 and

therefore I.D. No. 28 of 1960 must be deemed to be pending on 2nd December 1960.

5. I have gone through the decision quoted by Sri Subba Rao in 1958 (II) LLJ 634. I must observe that this decision does not deal with the case of withdrawals of references by the parties. It is now here said in the industrial law that the parties to the dispute cannot withdraw the dispute either on the ground of settlement or on the ground that the matter has been agreed to be referred to arbitration. In cases where the disputes are withdrawn from the Industrial Tribunal there is no determination of the dispute but there is only a termination of the proceedings. The question for consideration is whether once the proceedings are terminated, the Tribunal does or does not become *functus officio* Sri Rangasway Iyengar appearing for the Management, referred to a dicision reported in 1959 (II) LLJ 172 which is a decision of the Bombay High Court. This case is exactly similar to the case on hand. Their Lordships of the Bombay High Court have held that the order like the award in this case cannot be deemed to be an award at all. Here are the observations of the Bombay High Court:—

> "The orders passed by the tribunal on the application for withdrawal made to it were that it was giving awards as per terms of the settlements. The terms of the settlement show that the disputes between the parties had not been dissolved; all that had been agreed to was that these disputes should be referred for decision to certain specified arbitrators. There was no decision by the Tribunal on the matters in dispute. Consequently there was no determination of the dispute within the meaning of the Act. Even though, therefore, the orders made by the tribunal are described as awards and were published as such in the official Gazette, they were not awards within the meaning of the Act. The position might have been different if the disputes had been settled on merits by private agreements and the tribunal had been asked to make awards of the agreement, but that is not case here."

Their Lordships have further observed:—

> " Where a dispute is withdrawn from the purview of an industrial tribunal the proceedings before the tribunal

> came to an end by the tribunal allowing the dispute to be withdrawn; but there is no determination of the dispute by it. A distinction must be drawn between the determination of an industrial dispute and the determination or termination of the proceedings before a tribunal."

Applying the principles of this decision to the facts of this case, it is clear that though the order dated 11th October 1960 was termed as an award, it cannot be construed as an award. The then Presiding Officer observed that the only award under the circumstances that could be passed by the Tribunal is to make an award dismissing or disposing of the Reference as not proceeded with. In I D. No 28 of 1960 the parties prayed for permission of the Tribunal to withdraw the Reference. The order passed in I.D. No. 28 of 1960 on 11th October 1960 is exactly the same as in the case reported in the Bombay High Court decision which is referred to above and there is no determination of the dispute in I.D. No. 28 of 1960 but there is only a termination of the proceedings as a result of the withdrawal of the dispute. I therefore hold that the present complaint filed on 2nd December 1960 cannot be said to be a complaint filed during the pendency of the said I.D. No. 28 of 1960 and I must hold that the proceedings in I.D. No. 28 of 1960 came to an end on 11th October 1960 when the Tribunal disposed of the Reference. The essential requirement of Section 33A is that such complaints could be filed only during the pendency of the proceedings. There being no proceedings pending on 2nd December 1960, this complaint filed on 2nd December 1960 is not maintainable. My finding on issue No. 5 (a) is that the Management has proved that there was no pendency of I.D. No. 28 of 1960 before the Industrial Tribunal when this complaint was filed. It follows that my finding on Issue No. 5(b) is that this complaint is not maintainable.

6. I make an award in the terms of my above findings, under the circumstances each party will bear its own costs.

A. PANCHAKSHARIAH,
Presiding Officer.
Industrial Tribunal.